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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/665,887

09/19/2003

Morten Storr

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04/18/2005

FISH & RICHARDSON, PC  
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SAN DIEGO, CA 92130-2081

EXAMINER

NGUYEN, PHUONGCHAU BA

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**Application No. 

10/665,887

Applicant(s)

STORR, MORTEN

Examiner

Phuongchau Ba Nguyen

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13 and 15-23 is/are rejected.
- 7) ☒ Claim(s) 10, 14 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9-19-3</u> . | 6) <input type="checkbox"/> Other: _____  |

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13, 15-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 7-9, 11, 16, 20-21, 24 of U.S. Patent No. 6,633,543.

#### **Regarding claims 1-7:**

For application claims 1, 6, and 7, although the conflicting claims are not identical, they are not patentably distinct from each other because the application claim 7 merely broaden the scope of the patented claim 1 by eliminating limitations following:

*"receiving a plurality of forward flow control cell at a switch from a source virtual circuit"* (patented claim 1, lines 2-3); *"receiving a plurality of backward flow control cells at the switch from a plurality of related destination virtual circuits"* (patented claim 1, lines 4-6); and *"the one or more database records included in a database"* (patented claim 1, lines 10-11);

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and rephrasing the following term, from “generating an aggregate backward flow cell based on the flow control data associated control with the source virtual circuit” (patented claim 1, lines 14-16) to --- *aggregating the network flow information associated with the first network portion in an aggregate packet*--- (application claim 1, lines 8-9—the limitation of the application claim 7 encompassing of the limitations of the application claims 1 and 6, in which the limitation of the patented claim 1, lines 14-16 had been rephrased to the limitation of the application claim 1, lines 8-9).

For application claims 2, 4-5, and 3, likewise, the application claims 2, 4-5, and 3 merely broaden the scope of the patented claims 7 and 2 respectively.

For applications claims 8-9, likewise, the application 8-9 merely broaden the scope of the patented claim 1 by eliminating the following limitation, “*the one or more database records included in a database*”(patented claim 1, lines 10-11) and rephrasing the following terms respectively, from “receiving a plurality of forward flow control cell at a switch from a source virtual circuit” (patented claim 1, lines 2-3) and “a switch” (patented claim 1, line 2) to ---*the first network portion includes a network device (a switch) that generates the first packet*--- (application claim 8, lines 1-2); and from “a switch from a source virtual circuit”(patented claim 1, lines 2-3) to ---*first network portion includes at least one of a switch and a router*---(application claim 9, lines 1-2).

It would have been obvious to one skilled in the art at the time invention was made to eliminate limitations that are not unnecessary for their invention and to rephrase elements so long as the unit or element under different name would perform the same function.

Also, it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference's element whose function is not needed would be obvious to one skilled in the art.

**Regarding claims 11-13:**

For application claim 11, although the conflicting claims are not identical, they are not patentably distinct from each other because the application claim 11 merely broaden the scope of the patented claim 11 by eliminating the limitations following:

"first port to exchange first flow control cells on a plurality of virtual circuits" (patented claim 11, line 2-3); "second port to exchange first flow control cells on another virtual circuit" (patented claim 11, lines 4-5); "control circuitry operatively coupling the first and second port circuitry, the control circuitry comprising circuitry to receive the first flow control cells" (patented claim 11, lines 14-16); "circuitry to send the aggregate flow control cell to the second port circuitry for transmission on the other virtual circuit" (claim 11, lines 20-21); and "to aggregate the first flow control cell data" (claim 11, lines 16-17);

and rephrasing the following terms respectively, from "a network switch" (patented claim 11, line 1), "flow control data" (patented claim 11, line 6), "the first flow control cells" (patented claim 11, line 7), "flow control cells" (patented claim 11, line 7), "to store flow control data" (patented claim 11, line 9), "source virtual circuit" (patented claim 11, line 10), and "for each of a plurality of backward flow control cells received

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from a plurality of destination virtual circuits associated with the source virtual circuit" (patented claim 11, lines 11-13) to ---*network device*--- (application claim 11, line 1), ---*circuitry*--- (application claim 11, line 2), ---*network flow information*--- (application claim 11, line 2), ---*other packets*--- (application claim 11, line 3), ---*to store at least a portion of the network flow information*--- (application claim 11, line 5), ---*first network portion*--- (application claim 11, line 3), and ---*from other packets received from other network portions associated with the first network portion*--- (application claim 11, lines 3-4), respectively.

For application claims 12-13, likewise, the application claims 12 and 13 merely broaden the scope of the patented claim 16:

It would have been obvious to one skilled in the art at the time invention was made to eliminate limitations that are not unnecessary for their invention and to rephrase elements so long as the unit or element under different name would perform the same function.

Also, it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference's element whose function is not needed would be obvious to one skilled in the art.

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**Regarding claims 15-23:**

For claims 15, 20, and 21, although the conflicting claims are not identical, they are not patentably distinct from each other because the application claim 21 merely broaden the scope of the patented claim 20 by eliminating the limitations following:

“receiving a forward flow control cell at a switch from a source virtual circuit” (patented claim 20, lines 3-4); “receiving a plurality of backward flow control cells at the switch from a plurality of related destination virtual circuits” (patented claim 20, lines 6-8); and “the one or more database records included in a database” (patented claim 20, lines 12-13);

and rephrasing the following term, from “generating an aggregate backward flow cell based on the flow control data associated control with the source virtual circuit” (patented claim 20, lines 16-18) to --- *aggregating the network flow information associated with the first network portion in an aggregate packet*--- (application claim 15, lines 9-10---the limitation of the application claim 21 encompassing of the limitations of the application claims 15 and 20, in which the limitation of the patented claim 20, lines 16-18 had been rephrased to the limitation of the application claim 15, lines 9-10).

For applications claims 16, 18-19, and 17, likewise, the application claims 16, 18-19, and 17 merely broaden the scope of the patented claim 24 and 21, respectively.

For applications claims 22-23, likewise, the application 22-23 merely broaden the scope of the patented claim 20 by eliminating the following limitation, “*the one or more database records included in a database*”(patented claim 20, lines 12-13) and rephrasing the following terms respectively, from “receiving a plurality of forward flow

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control cell at a switch from a source virtual circuit" (patented claim 20, lines 4-5), "a switch" (patented claim 20, line 4) to ---*the first network portion includes a network device that generates the first packet*--- (application claim 22, lines 1-2); and from "a switch from a source virtual circuit"(patented claim 20, lines 4-5) to ---*first network portion includes at least one of a switch and a router*---(application claim 23, lines 1-2).

It would have been obvious to one skilled in the art at the time invention was made to eliminate limitations that are not unnecessary for their invention and to rephrase elements so long as the unit or element under different name would perform the same function.

Also, it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference's element whose function is not needed would be obvious to one skilled in the art.

### ***Allowable Subject Matter***

3. Claims 10, 14, 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose telephone number is



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571-272-3148. The examiner can normally be reached on Monday-Friday from 10:00 a.m. to 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*PN*  
Phuongchau Ba Nguyen  
Examiner  
Art Unit 2665